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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,033	03/01/2002	Claudson F. Bornstein	12293:74	6484

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EXAMINER

BOAKYE, ALEXANDER O

ART UNIT PAPER NUMBER

2616

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/087,033

Applicant(s)

BORNSTEIN ET AL.

Examiner

ALEXANDER BOAKYE

Art Unit

2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 is/are allowed.
- 6) ☒ Claim(s) 12-15, 17 and 19 is/are rejected.
- 7) ☒ Claim(s) 16 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 101***

**1. 35 U.S.C. 101 reads as follows:**

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 12-19 are rejected under 35 U.S.C. 101 because "The server" comprises "of executable code" per se which is not acceptable language in computer-processing related claims. Appropriate correction is required. Please see MPEP interim Guide pages 52-54.

***Claim Rejections - 35 USC § 103***

**2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCanne (US Patent # 6,785,704) in view of Aklepi et al. (US Patent # 6,795,823).

Regarding claims 12 , 15, 17, 19, McCanne teaches a server for use in a content delivery network ( Fig. 2) comprising: code executable in the server (column 8, lines 37-40) for initiating a performance metric test on a set of potential routes between the server and a given second server (Figs. 1 and 2 ) wherein at least one of the potential routes passes through a server intermediate the server and the given server (the claimed server intermediate is inherent in the intermediate network 28 of Fig. 2) ; and code executable in the server for collecting and analyzing data generated (column 8, lines 37-40). McCanne differs from the claimed invention in that McCanne does not disclose determining an optimal path between the server and the given server.

However, Aklepi with the same field of endeavor discloses determining an optimal path between the server and the given server (column 9, lines 4-15). One of ordinary skill in the art would have been motivated to incorporate determining an optimal path into the communication network in order to minimize delivery times. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate determining an optimal path such as the one taught by Aklepi into communication network of McCanne with the motivation being that it provides capability for the system to minimize delivery times, thus enhancing efficiency.

Regarding claim 13, McCanne teaches that the server is an edge server and the given server is the a content provider origin server (column 9, lines 56-60 ).

Regarding claim 14, McCanne teaches that the server is an edge server and the given server is a reverse proxy server (column 9, lines 56-60).

***Allowable Subject Matter***

3. Claims 16 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-10, 11 are allowable.

The following is a statement of reasons for the indication of allowable subject matter: As to claims 1-10, the prior art of record does not teach executing a race by initiating a concurrent download of the file over each of the direct route and the set of one or more alternate routes; and as the result of the race, determining an optimal route between the edge server and the content provider origin server. As to claim 11, the prior art of record does not teach determining an optimal route between the edge server and the content provider origin server as a function of the concurrent downloads.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Boakye whose telephone number is (571) 272-3183. The examiner can normally be reached on M-F from 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (571) 272-3179. The Central Fax number is (571) 273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Electronic Business Center numbers 866-217-9197 and 703-305-3028.

Alexander Boakye

Patent Examiner

AB  
12/10/06

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER 12/11/02